

DEPARTMENT OF CALIFORNIA HIGHWAY PATROL

INITIAL STATEMENT OF REASONS

TITLE 13, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 6
AMEND ARTICLE 3, SECTIONS 1160.3 – 1160.4 AND ADD SECTION 1160.5

GENERAL HAZARDOUS MATERIALS REGULATIONS (CHP-R-08-02)

PURPOSE OF REGULATORY ACTION

California Vehicle Code (VC) Section 2402 authorizes the Commissioner of the California Highway Patrol (CHP) to make and enforce regulations as necessary to carry out the duties of the CHP. Section 2402.7 VC specifically requires the Commissioner to adopt definitions designated by the United States Department of Transportation relating to hazardous materials, substances, or wastes. Sections 32000.5, 32002, 34501, and 34501.5 VC allow the CHP to adopt reasonable rules and regulations which are designed to promote the safe operation of vehicles described in Section 34500 VC, including but not limited to those transporting hazardous materials (HM). The adopted regulations are contained in Title 13, California Code of Regulations (13 CCR).

Pursuant to Division 14.1 (commencing with Section 32000) of the VC, the CHP is authorized to inspect and license the motor carriers with special attention directed to the negligent operators or repeat violators. Additionally, the CHP provides additional protection through the licensing of motor carriers transporting HM. This rulemaking adopts changes which clarify HM licensing requirements; prohibit the Department from licensing a motor carrier for transportation of HM unless the motor carrier has submitted the required fees and a fully and accurately completed application for participation in the Biennial Inspection of Terminals (BIT) program pursuant to Section 34501.12 VC; contains non-substantive changes to regulatory language in order to lend further clarity to existing rules; and is promulgated pursuant to mandates as a result of Assembly Bill 1612, Chapter 415, statutes of 2007, and changes to Section 32000.5, VC.

SECTION BY SECTION OVERVIEW

Title 13 CCR, Division 2, Chapter 6 contains the CHP Hazardous Materials Regulations. Article 3, Sections 1160 through 1168, contain General Hazardous Material Regulations.

Article 3. General Hazardous Materials Regulations

Section 1160.3. Definitions.

Subsection (b) is amended to better define the term “Carrier,” to mean as the term is used in Section 1235.1. The CHP intends to adopt regulations in order to meet the intent and mandate of Section 32000.5 VC. Because Section 32000.5 VC requires every motor carrier who transports HM in a quantity requiring the display of placards to obtain a license and requires the CHP to adopt regulations that provide for a temporary license to transport hazardous materials, it is important to clarify which carriers will be affected by those regulations.

Currently, the definition of “Carrier” as used in Article 3 is based on only a general understanding of the term as it is used in highway transportation. Moreover, Title 13 CCR, Division 2, Chapter 6.5, Article 6.5, Section 1235.1 contains the definition of motor carrier for the purpose of CHP safety regulations and indicates the terms “Motor Carrier” and “Carrier” may be used interchangeably unless otherwise specified. Consequently, it is equally important that CHP regulations affecting safety, including but not limited to those related to drivers’ hours of service, vehicle maintenance, and transportation of HM, be consistent.

Subsection (e) is amended in order to specify the meaning of the term “License” as it is used throughout Article 3 to mean a license issued by the CHP to transport HM. Because the CHP issues a variety of licenses and regulations governing the issuance of those licenses are contained within Title 13 CCR, it is important to ensure clear understanding of the intent of this term as it relates to the transportation of HM.

Subsection (f) is amended to clarify the term “New License” to mean one issued pursuant to an application received more than 30-days after the expiration of an existing license. The CHP issues a variety of licenses to carriers for the purpose of HM transportation. Issuance of the licenses is authorized by Section 2501 VC which also outlines timeframes for the expiration of licenses and issuance of renewal licenses. As a result, it is imperative the CHP adopt regulations to clarify the intent of the enabling statutes and to differentiate between the different types of Hazardous Materials Transportation Licenses (HMTL) issued by the CHP.

Subsection (g) is added to clarify the term “Original License” as a license to transport HM which is printed by and forwarded to a carrier by the CHP. The CHP will adopt regulations within this rulemaking requiring the surrender of an “Original License” upon cancellation, suspension, or revocation of the license. The carrier will be required to surrender the license printed by the Department and forwarded to that carrier under any of the aforementioned conditions. It is anticipated this requirement will restrict the unauthorized use, duplication, or distribution of an invalid license.

Subsection (i) is added to define the term “Renewal License” to mean a license to transport HM pursuant to the receipt of a fully and accurately completed application and all required fees, not later than 30-days after the expiration of an existing license. In order to remain consistent with

the intent of the enabling statutes, it is important to clarify the term “Renewal License” to ensure clear understanding of and differentiation from other HMTL issued by the CHP.

Subsection (k) is added to clarify the term “Initial License” to mean a New License and any other license to transport HM issued to a carrier not previously issued a license, pursuant to the receipt of a fully and accurately completed application and all required fees. This clarification will further differentiate between the various HMTL issued by the CHP.

Additionally, this clarification will enhance the ability of the CHP to meet the mandates and intent of Section 32000.5 VC as they relate to the issuance of a license to carriers who have received an unsatisfactory compliance rating as the result of an inspection conducted pursuant to Sections 34501, any inspection conducted to ensure compliance with safety requirements; 34501.12, an inspection conducted to ensure compliance with requirement of the Biennial Inspection of Terminals (BIT) program; or 34520 VC, an inspection conducted to ensure compliance with applicable controlled substances and alcohol testing requirements.

Subsection (l) is added to define the term “Temporary License” as it is used in Article 3. This definition will clarify a “Temporary License” as one which is valid for not more than 60-days from the date signed and submitted by the applicant. This Subsection will also specify a “Temporary License” becomes immediately null and void when the applicant for a New or Initial License is assigned an unsatisfactory safety compliance rating by the CHP.

This clarification will facilitate understanding of the term “Temporary License” and allow the CHP to meet the mandates and intent of the statutory prohibition from issuing a “Temporary License” to any carrier who has received an unsatisfactory compliance rating as the result of any inspection conducted pursuant to Sections 34501, 34501.12, or 34520 VC.

Section 1160.4 – General Provisions.

Subsection (a)(2) is added to clarify and strengthen the applicability of existing requirements for compliance with Section 34501.12 VC (BIT) to carriers transporting HM in quantities requiring the license. Participation in the BIT program is required for operators of specified vehicles, including but not limited to carriers operating vehicles transporting HM in a quantity requiring a license.

Currently, CHP records contain information indicating numerous licensed HM transporting carriers, subject to BIT, fail to participate in the program as required. This addition will increase equity between carriers, promote a business friendly environment in California, and properly place responsibility for participation in the BIT program on all carriers transporting HM and subject to its provisions.

For the purpose of Division 2, Chapter 6, Article 3, participation in the BIT program means the carrier has submitted a fully and accurately completed Application for Terminal Inspection and all required fees to the CHP for each terminal located in California. Additionally, it remains the

responsibility of the carrier to schedule the inspection(s) with the CHP and ensure their completion within the time frames specified in Section 34501.12 VC.

Subsection (a)(3) is added to require all shippers to verify, prior to offering HM for transportation, the HM transporting carrier holds a current and valid license. Currently, while carriers may not transport HM in a quantity requiring a license unless they are properly licensed in accordance with the applicable provisions, shippers who offer HM for transportation by carrier have little responsibility to ensure the licensure requirements are met by the carrier. This addition will properly place additional responsibility on shippers, as well as the carriers of HM, to ensure carriers are properly licensed by the CHP, thus increasing awareness and public safety.

Subsection (g)(2)(A) is added requiring the Original License, as defined in Section 1160.3(g), to be immediately surrendered to the CHP upon cancellation, suspension, or revocation of the license privileges. This addition is intended to reduce the use, duplication, or distribution of an invalid license. Moreover, the addition requires the Original License to be forwarded, by the carrier to the CHP, via US Mail or other similar means and requires the destruction of all copies.

Currently, transportation of HM by carriers with a cancelled, suspended, or revoked license remains a viable circumvention technique. This addition is intended to thwart this technique, to the extent possible, and increase public safety by limiting transportation of HM by carriers not currently and properly licensed by the CHP as outlined herein.

Subsection (g)(2)(B) is added to permit the CHP to revoke a license issued in error, without prejudice. Only those carriers with the statutory authority to hold a license shall be issued one. In the event a license is issued to a carrier in error, this provision is intended to reduce the administrative and fiscal burden on both the carrier and the CHP. Furthermore, this addition will facilitate expeditious remedy of licensing errors while fulfilling the intent of the enabling statute contained in Section 32000.5 VC restricting the issuance of HMTL transportation licenses to properly qualified carriers.

Subsection (g)(2)(C) is added prohibiting the issuance of a license to transport HM to any carrier subject to Section 34501.12 VC (BIT), unless all fully and accurately completed applications and required fees are on file with the CHP. This addition will inhibit the ability of carriers who fail to comply with the BIT program requirements to transport HM in a quantity requiring the license.

Furthermore, this addition will allow the CHP to fulfill the intent of Section 34501.12 VC as it relates to the collection of BIT program fees. It is the mission of the CHP to ensure carriers, including but not limited to those transporting HM, operate vehicles and transport HM safely. The BIT program provides CHP with a statutory means to increase public safety through inspection of carriers holding a license to transport HM.

Subsection (g)(2)(D) is added prohibiting the CHP from issuing a New or Initial License to any carrier subject to Section 34501.12 VC who has been issued an unsatisfactory compliance rating within the immediately preceding three years and unless each terminal from which HM

transporting vehicles are operated is in compliance with Section 34501.12 VC (BIT) and has a satisfactory rating on file with the Department.

This addition clarifies the intent of the enabling statute contained in Section 32000.5 VC as it relates to the issuance of New and Initial licenses to transport HM. As result of incidents arising from the transportation of HM which adversely affected public safety, Assembly Bill 1612 placed a renewed focus on the transportation of HM through more stringent controls related to the issuance of HM transportation licenses. This addition clarifies the intent of that legislation and provides clear understanding of its applicability and affect.

Subsection (g)(2)(E) is added prohibiting the CHP from issuing an HMTL to a carrier unless the carrier is in compliance with the requirements to obtain a Special Permit and/or Registration pursuant to Title 49, Code of Federal Regulations, Part 107, Subpart (g) and Part 171, Subpart (a), respectively. Furthermore, this addition provides the CHP with authority to require proof of compliance with the applicable requirements.

In addition to California HM transportation licensure requirements, carriers transporting HM are subject to federal requirements to register with the Secretary of the Department of Transportation (US DOT) and under specified conditions, obtain a Special permit from the Federal Motor Carrier Safety Administration (FMSCA). This addition will place added responsibility on carriers for compliance with these requirements, provide the CHP with additional means of determining compliance, and prohibit the issuance of a license unless those requirements are met. In order to increase public safety, it is the intent of the Department to ensure compliance with all applicable requirements related the transportation of HM.

Subsection (g)(3) is added to further clarify the intent of the enabling statute contained in Section 32000.5 VC as it relates to the issuance of a Renewal License. This addition will permit the Department to issue a Renewal License to a carrier when a fully and accurately completed application for that license and all required fees are received prior to the expiration of an existing license.

Subsection (g)(4) is added in order to further clarify the conditions under which a New License will be issued. The CHP will issue a New License to a carrier when a fully and accurately completed Application for a Hazardous Material License and all required fees are received by the Department more than 30-days after the expiration of an existing license and no proof of HM transportation during any period the carrier was not properly licensed is discovered.

Moreover, a carrier who submits an application and fees more than 30-days after the expiration of an existing license is subject to the provisions of Section (g)(2)(D). As outlined in the Section, the license will not be issued if the carrier has been assigned an unsatisfactory compliance rating within the immediately preceding three years and unless each terminal from which HM transporting vehicles are operated is in compliance with Section 34501.12 VC (BIT) and has a satisfactory rating on file with the Department.

Subsection (g)(5) is added to clarify responsibility for the acquisition of an application and licensure prior to the transportation of HM. The addition places responsibility on carriers to ensure they obtain an application from the Department, are properly licensed prior to the transportation of HM, and is intended to relieve the CHP of unintended responsibility for notification to the carrier. Although Section 32000.5 VC requires each carrier subject to the provisions to be properly licensed, this addition ensures responsibility is properly placed on the carrier for compliance with licensure requirements.

Subsection (g)(6) is amended to clarify requirements to carry a copy of the HM license in each vehicle transporting HM. Amendments to the Subsection will also require a copy of any US DOT or FMCSA required HM transportation registration and/or special permit be carried in each vehicle transporting HM and make them available for inspection upon request. Additionally, this amendment will expand and clarify persons to whom the documents must be presented for inspection.

Currently, only a copy of the HM Transportation License is required to be carried in each vehicle transporting HM and it is required to be presented to any traffic officer upon request. This amendment will expand upon those requirements and mandate not only a copy of the HM license issued by the CHP be carried, but require copies of all US DOT and FMCSA required registrations and special permits to be carried in any vehicle transporting HM also. Additionally, the amendment will require the documents be presented for inspection upon request by any regularly salaried peace officer or authorized employee of the CHP.

Subsection (g)(7) is amended to clarify requirements to permit the use of a Temporary License. This amendment will add language indicating all required license fees must be paid and prohibit the transportation of hazardous materials with a temporary license if the carrier has been assigned an unsatisfactory compliance rating within the immediately preceding three years, for any inspection conducted pursuant to Vehicle Code Sections 34501, 34501.12, or 34520.

While provisions currently exist for the transportation of HM with a Temporary License, this amendment adds emphasis on requirements for compliance with BIT program, controlled substances and alcohol testing, and other safety of operation requirements, including but not limited to the submission of all required, fully and accurately completed Applications for Terminal Inspection and payment of all required fees. The amendment also assists the CHP in fulfilling the intent of statutory requirements contained in Section 32000.5 VC.

Subsection (g)(7)(A) is amended to clarify requirements related to the transportation of HM with a Temporary License. Currently, conditions for the use of a Temporary License include requirements to carry a copy of a completed application and a copy of a check indicating payment of license fees. This amendment will add language to clarify the term “completed application” to mean an application that is fully and accurately completed and to clarify the term “payment of the fee” to mean the payment of all required license fees.

Subsection (g)(7)(B) is amended to clarify requirements related to the transportation of HM

with a Temporary License. Currently, the Subsection permits transportation of HM with Temporary License when a copy of a telegraphic money order or copy thereof, made payable to the CHP, indicating payment of the fees, is carried in each vehicle transporting HM. This amendment will add language clarifying the term “payment of fees” to mean payment of all required license fees.

Subsection (g)(8) is added to codify the intent of Section 32000.5 VC as it relates to the issuance of HM transportation licenses. This addition indicates the issuance and verification process used by CHP should not unreasonably hinder a carrier’s capacity to transport HM.

This addition is intended to place responsibility for the timely issuance and verification of licenses and carriers on the CHP. However, it is not the intent of this addition to place responsibility on the Department when a carrier fails to fully comply with applicable requirements, including but not limited to: the submission of fully and accurately completed applications; submission of all required fees; failure to make themselves available or submit to any required inspections; or failure to provide proof of compliance upon request.

Subsection (g)(9) is amended to correct existing errors. The amendment corrects the revision date of the currently available and required Application for Hazardous Materials License (CHP 361M) to reflect a revision date of “01-08.” Additionally, this amendment corrects the erroneous CHP web site address where the aforementioned Application and associated instructions may be accessed. The corrected address is <http://www.chp.ca.gov/publications/index/html>.

Section 1160.5 – Records of the Department.

Section 1160.5 is added.

Subsection (a) is added to outline the contents of CHP records associated with the issuance of HMTL. This addition also provides authority for the Department to collect information and maintain and retain associated records in either electronic or hard-copy format, or both. Currently, no regulations exist which clarify CHP records related to the issuance of Hazardous Materials Transportation Licenses.

Subsections (a)(1) through (12) are added to outline but not limit specific information permitted to be collected and maintained in association with the issuance of HMTL, as follows:

(a)(1) Identification of each person (carrier), as defined in Section 1235.1, subject to Section 32000.5 VC.

(a)(2) Any fictitious business name adopted pursuant the California Business and Professions Code, commencing with Section 17900, used by the carrier.

(a)(3) The federal employer identification number issued to the carrier by the United States Department of the Treasury, Internal Revenue Service.

(a)(4) The physical and mailing address and telephone number of the carrier’s principal place of business and any terminal location used by the carrier in the state of California.

- (a)(5) The CA number issued to the carrier, by the CHP, as outlined in Division 2, Chapter 6.5, Article 6.5, Sections 1235.1 through 1235.6.
- (a)(6) Any current or previously held HMTL, identified by license number and date of expiration.
- (a)(7) Any US DOT number and FMCSA operating authority number issued to the carrier.
- (a)(8) The corporation, Partnership, Limited Liability Company, or any other identifying number of the carrier, issued by the California Secretary of State or any other properly authorized issuing authority.
- (a)(9) The Pipeline and Hazardous Materials Safety Administration registration and FMCSA Safety Permit numbers and expiration dates.
- (a)(10) Information describing the types of HM transported or intended to be transported by the carrier.
- (a)(11) Information related to the background of the applicant and all company officers or principals.
- (a)(12) The name, title, signature certification of the carrier's authorized representative, and the date of that certification.

STUDIES/RELATED FACTS

The provisions of Assembly Bill 1612 became operative January 1, 2008, and mandated the CHP adopt rules and regulations which provide for a temporary license to transport hazardous materials for carriers who, within the previous three years, have not been assigned an unsatisfactory rating for an inspection conducted pursuant to Section 34501, 34501.12, or 34520 VC. These amendments are promulgated as a result of the mandate.

CONSULTATION WITH OFFICIALS

None.

LOCAL MANDATE

These regulations do not impose a new mandate on local agencies or school districts.

IMPACT ON BUSINESS

These regulations affect every motor carrier who directs the transportation of an explosive and any motor carrier who directs the transportation of a hazardous material, who is required to display placards pursuant to Section 27903, and every motor carrier who transports for a fee in excess of 500 pounds of hazardous materials of the type requiring placards pursuant to Section 27903 of the Vehicle Code. All those on the interested party list are notified of proposed changes and given the opportunity for comment. It is assumed that both small and large businesses, as well as industry advocates are included in this group, although the Department does not request nor maintain such data. Nothing in these regulation changes impact businesses that are not already affected.

ALTERNATIVES

The CHP has not identified any alternative, including the no-action alternative, which would be more effective and less burdensome for the purpose for which this action is proposed.

Additionally, the CHP has not identified any alternative which would be as effective and less burdensome to affected persons other than the action being proposed.

ECONOMIC IMPACT TO THE STATE

The CHP has determined these regulation amendments will result in:

- No significant compliance cost for persons or businesses directly affected.
- No discernible impact on the level and distribution of costs and prices for large and small businesses.
- No impact on the level of employment in the state.